

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 17, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 2:24-CV-00411-SAB

In re:

AGNES NICZYPORUK,
Debtor.

**ORDER DENYING MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Before the Court is Debtor/Appellant Agnes Niczyporuk's Emergency Motion for Temporary Restraining Order and Preliminary Injunction Pending Appeal, ECF No. 4. The motion was heard without oral argument. Ms. Niczyporuk is representing herself in this matter. Secured creditor U.S. Bank National Association as Trustee for LB-IGLOO SERIES IV TRUST, its successors and/or assigns ("USB") filed an opposition to the motion. USB is represented by Warren Lance.

Debtor/Appellant is seeking to stop the foreclosure on their property located in Liberty Lake, Washington.

Background Facts

USB holds a secured claim under a promissory note dated February 25, 2008, secured by a Deed of Trust recorded on March 5, 2008, which encumbers the property at 1315 N. Dunbarton Oaks Lane, Liberty Lake, Washington ("the

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION ~ 1**

1 property”). The loan was modified under the terms of a Loan Modification
2 Agreement executed on July 23, 2019.

3 Debtor/Appellant’s original loan was from Countrywide Home Loans, Inc.
4 In the intervening years, the Deed of Trust has been assigned several times before
5 being assigned to USB under an Assignment of Deed of Trust on September 23,
6 2022. Debtor/Appellant defaulted on the modified loan when they failed to make
7 the August 2019 payment. To this date, Debtor/Appellant has not made a payment
8 in any amount to USB or its predecessor.

9 Debtor/Appellant filed a Voluntary Petition Under Chapter 13 in 2023. On
10 September 24, 2023, the bankruptcy court granted USB’s Motion for Relief from
11 Stay. The Stay Order allowed USB to proceed with foreclosure of the property.¹

12 Nearly a year later, on September 13, 2024, Debtor/Appellant filed a Motion
13 for Relief From Judgment Pursuant to Fed. R. Civ. P. 60. The bankruptcy court
14 denied the motion. It found that Debtor/Appellant had “merely re-packages her
15 prior reconsideration arguments under a different procedural rule.” It noted that the
16 motion offered no new evidence or substantive allegations of fraud or
17 misrepresentation. Instead, the bankruptcy court concluded that Debtor/Appellant
18 simply asserted there had been several fabricated, forged, and fraudulent
19 assignments of the mortgage and servicing record. It also noted that these

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21 ¹ Debtor/Appellant received a discharge on September 13, 2023. She moved for
22 reconsideration of the Stay Order on September 22, 2023. The bankruptcy court
23 denied the reconsideration motion. Debtor/Appellant appealed the Stay Order and
24 Reconsideration Order. On appeal the Bankruptcy Appeal Panel affirmed the
25 Court’s Stay Order and Reconsideration Order. Debtor/Appellant did not appeal
26 the Panel’s decision. The Bankruptcy Appeals Panel also affirmed the
27 bankruptcy’s decision that no genuine issue of fact existed concerning U.S. Bank’s
28 ownership of the Note.

1 arguments were the same arguments that Debtor/Appellant had previously
2 litigated. Thus, the bankruptcy court found that issue preclusion barred
3 Debtor/Appellant's motion.

4 In this present action, Debtor/Appellant is appealing the bankruptcy court's
5 denial of her Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60.
6 Debtor/Appellant now moves the Court to restrain and enjoin the foreclosure sale
7 of the property.

8 **Motion Standards**

9 **A. Temporary Restraining Order/Preliminary Injunction**

10 The purpose of a temporary restraining order is to preserve the status quo
11 and to prevent irreparable harm "just so long as is necessary to hold a hearing, and
12 no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439
13 (1974). The standard governing the issuing of a temporary restraining order is
14 "substantially identical" to the standard for issuing a preliminary injunction. *See*
15 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
16 2001).

17 In order to succeed in obtaining a preliminary injunction the party seeking it
18 must demonstrate: (1) they are likely to succeed on the merits; (2) they are likely to
19 suffer irreparable harm in the absence of preliminary relief; (3) the balance of
20 equities tips in their favor; and (4) an injunction is in the public interest. *Winter v.*
21 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

22 Likelihood of success on the merits is the most important *Winter* factor.
23 *Garcia v. Google, Inc.*, 786 F.3d 733, 739 (9th Cir. 2015). If the party seeking the
24 injunction fails to meet this "threshold inquiry," the court need not consider the
25 other factors when there are no serious questions going to the merits. *Disney*
26 *Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

27 **B. Bankruptcy Appeal Standard**

28 A bankruptcy court's denial of a motion for relief from judgment under Fed.

1 R. Civ. P. 60(b) is reviewed for abuse of discretion. *In re Int'l Fibercom, Inc.*, 439
2 F.3d 558, 561 (9th Cir. 2006). A bankruptcy court abuses its discretion if it bases a
3 decision on an incorrect legal rule, or if its application of the law was illogical,
4 implausible, or without support in inferences that may be drawn from the facts in
5 the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009).

6 **C. Rule 60 - Relief from Judgment**

7 Rule 60(b), incorporated to bankruptcy proceedings by Federal Rule of
8 Bankruptcy Procedure 9024, permits a court to relieve a party from a final
9 judgment or order for a number of reasons, including (1) mistake, surprise, or
10 excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or
11 misconduct by an opposing party, or (4) any other reason that justifies relief.

12 **Analysis**

13 Here, Debtor/Appellant fails to meet the threshold inquiry because there are
14 no serious questions going to the merits of this appeal. The question before the
15 Court in this appeal is whether the bankruptcy court abused its discretion when it
16 denied Debtor/Appellant's Relief From Judgment. Based on the record before the
17 Court, there is not a substantial likelihood that Debtor/Appellant can succeed in
18 showing that it did. Debtor/Appellant has not shown the bankruptcy court based its
19 decision on an incorrect legal rule, or its application of the law was illogical,
20 implausible, or without support in inferences that were drawn from the facts in the
21 record. As such, Debtor/Appellant has not shown that a temporary restraining order
22 or preliminary injunction is appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Debtor/Appellant Agnes Niczyporuk's Emergency Motion for
3 Temporary Restraining Order and Preliminary Injunction Pending Appeal, ECF
4 No. 4, is **DENIED**.

5 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
6 and forward copies to Plaintiff and counsel.

7 **DATED** this 17th day of January 2025.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

14 Stanley A. Bastian
15 Chief United States District Judge
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